

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

PHILLIP MCKENZIE PAYNE,

Petitioner,

Case No. 5:18-cv-14168

v.

HONORABLE JOHN C. O'MEARA  
UNITED STATES DISTRICT JUDGE

CONNIE HORTON,

Respondent.

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**ORDER DENYING WITHOUT PREJUDICE PETITIONER'S MOTIONS FOR  
EXTENSION [2] AND TO HOLD THE PETITION IN ABEYANCE [3]**

On January 16, 2018, Michigan prisoner Phillip McKenzie Payne ("Petitioner") filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter is before the Court on Petitioner's motions for extension of time and to hold the petition in abeyance. (ECF Nos. 2 and 3.) In both motions, Petitioner seeks additional time in which to obtain his state court record and, if necessary, amend the instant petition. Respondent has not yet filed an answer to the petition, and her answer is not due until July 30, 2018.

Petitioner's motions are premature. Under the Federal Rules of Civil Procedure, a party may amend a pleading to which a response is required within 21 days after service of the responsive pleading. Fed. R. Civ. P. 15(a)(1).<sup>1</sup> Since a responsive pleading has

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<sup>1</sup> Rule 15(a) applies to habeas cases as it applies to other civil cases. See 28 U.S.C. § 2242 (habeas petitions "may be amended or supplemented as provided in the rules of procedure applicable to civil actions").

not yet been filed, and will not be filed for another six months, Petitioner has the right to amend his petition in the interim without seeking the Court's permission. If Petitioner is unable to gather the materials within the six-month window, he is entitled to file a motion to extend the deadline or to hold the case in abeyance. Accordingly, Petitioner's motions are **DENIED WITHOUT PREJUDICE** as premature.

**IT IS SO ORDERED.**

Date: January 30, 2018

s/John Corbett O'Meara  
United States District Judge

I hereby certify that on this date, January 30, 2018, a copy of this order was served upon the parties of record using the court's ECF system and/or first-class U.S. mail.

s/William Barkholz  
Case Manager